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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/596,505	03/23/2007	Peter G. Selen	59076US009	7399
32692 7590 04/15/2010 3M INNOVATIVE PROPERTIES COMPANY PO BOX 33427 ST. PAUL, MN 55133-3427				
EXAMINER HUANG, CHENG YUAN				
ART UNIT		PAPER NUMBER		
1787				
NOTIFICATION DATE		DELIVERY MODE		
04/15/2010		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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LegalDocketing@mmm.com

### Office Action Summary

**Application No.**

10/596,505

**Applicant(s)**

SELEN ET AL.

**Examiner**

CHENG HUANG

**Art Unit**

1787

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 February 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8, 10-17, 19-22 and 24-28 is/are pending in the application.
- 4a) Of the above claim(s) 1-8, 21, 22 and 24-28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10-17 and 19-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

1. In paragraphs 23 and 32 of the previous Office Action, Examiner inadvertently referred to 35 U.S.C. 103(a) rejections as 35 U.S.C. 102(b) rejections. These rejections are correctly set forth below and, therefore, the action is considered as non-final.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 10-14 and 16-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Tritsch (U.S. Patent No. 3,930,503).

4. Regarding claim 10, Tritsch teaches a closure tape tab for an absorbent article (See Abstract), for fastening of the article on the body of a person (col. 2, lines 10), comprising a proximal end portion (terminal end 15, pressure sensitive adhesive layer 15, col. 2, line 66, Fig. 3, col. 2, line 42) and a distal end portion (terminal end 16, col. 2, line 43, Fig. 3) being connected by an inner tab portion (central segment 17, col. 2, lines 43-45), said inner tab portion having a first major surface (lower surface, Fig. 3) and an opposite second major surface (upper surface, Fig. 3), wherein said proximal end portion is connected to said inner tab portion at said second major surface thereof such that said proximal end portion extends over at least a substantial portion of said inner tab portion (pressure sensitive adhesive layer 15, Fig. 3), and

said distal end portion is connected to said inner tab portion at said first major surface thereof such that at least a portion thereof remains exposed (Fig. 3) given that the distal end portion and inner tab portion are connected, and wherein an anti-adhesive means is provided at least at a part of said exposed portion of the first major surface of the inner tab portion (release surface 25, col. 2, line 63).

5. Regarding the claimed limitations "for an absorbent article, for fastening of the article on the body of a person" applicants attention is drawn to MPEP 2111.02 which states that "if the body of a claim fully and intrinsically sets forth all the limitations of the claimed invention, and the preamble merely states, for example, the purpose or intended use of the invention, rather than any distinct definition of any of the claimed invention's limitations, then the preamble is not considered a limitation and is of no significance to claim construction". Further, MPEP 2111.02 states that statements in the preamble reciting the purpose or intended use of the claimed invention must be evaluated to determine whether the purpose or intended use results in a structural difference between the claimed invention and the prior art. Only if such structural difference exists, does the recitation serve to limit the claim. If the prior art structure is capable of performing the intended use, then it meets the claim.

6. It is the examiner's position that the preamble does not state any distinct definition of any of the claimed invention's limitations and further that the purpose or intended use, i.e. for an absorbent article, for fastening of the article on the body of a person, recited in the present claims does not result in a structural difference between the presently claimed invention and the prior art closure tape tab and further that the prior art structure which is a closure tape tab identical to that

set forth in the present claims is capable of performing the recited purpose or intended use.

Furthermore, the claimed limitations are taught by the prior art as disclosed above.

7. Regarding claim 11, Tritsch teaches wherein said anti-adhesive means extends over the entire length of exposed portion of said first major surface of said inner tab portion (Fig. 3).
8. Regarding claims 12 and 13, Tritsch teaches wherein said anti-adhesive means is an anti-adhesive paper, an anti-adhesive film, a cover strip or a liner, or an anti-adhesive coating (col. 4, lines 30-34) where an anti-adhesive film is considered to be an anti-adhesive coating, and a cover strip or liner is considered to be the release paper taught by Tritsch.
9. Regarding claim 14, Tritsch teaches wherein said inner tab portion comprises an elastic (col. 3, lines 18-22).
10. Regarding claim 16, Tritsch teaches wherein an adhesive is provided on the distal end portion (pressure-sensitive adhesive 26, col. 2, line 66, Fig. 3) given that the adhesive is on the distal end portion as depicted in Fig. 3.

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

12. Claims 10-16, and 19-20 are rejected under 35 U.S.C. 102(a) as being anticipated by Loescher (WO 2004/075803).
13. Regarding claim 10, Loescher teaches a closure tape tab (elastic laminate fastening tab, Abstract) for an absorbent article, for fastening of the article on the body of a person (page 1,

lines 5-7), comprising a proximal end portion (right portion of closure element 8, page 7, line 13) and a distal end portion (left portion of closure element 6, page 7, line 13) being connected by an inner tab portion (middle portion of elastic laminate fastening tab 2, blanking film portion 30, elastic element 18, page 7, line 32, page 8, line 2, Fig. 2), said inner tab portion having a first major surface (upper surface of elastic laminate fastening tab 2, Fig. 2) and an opposite second major surface (lower surface of elastic laminate fastening tab 2, Fig. 2), wherein said proximal end portion is connected to said inner tab portion at said second major surface thereof given that the right portion of closure element 8 is connected to the lower surface of middle portion of elastic laminate fastening tab 2 via adhesive 22 (Fig. 2) and such that said proximal end portion extends over at least a substantial portion of said inner tab portion (blanking film portion 30, Fig. 2), and said distal end portion is connected to said inner tab portion at said first major surface thereof given that the upper surfaces of distal end portion and inner tab portion are on the same side and connected to each other such (Fig. 2) that at least a portion thereof remains exposed (See Fig. 2), and wherein an anti-adhesive means (blanking film portion 28, page 8, line 2) is provided at least at a part of said exposed portion of the first major surface of the inner tab portion (See Fig. 2).

14. Regarding claim 11, Loescher teaches wherein said anti-adhesive means extends over the entire length of said exposed portion of said first major surface of said inner tab portion (blanking film portion 28, page 8, line 2, Fig. 2).

15. Regarding claims 12 and 13, Loescher teaches wherein said anti-adhesive means is an anti-adhesive paper, an anti-adhesive film, a cover strip or a liner, or an anti-adhesive coating

(page 8, lines 2-9) where an anti-adhesive film taught by Loescher is considered to be an anti-adhesive coating.

16. Regarding claim 14, Loescher teaches wherein said inner tab portion comprises an elastic (Page 11, lines 13-15).

17. Regarding claim 15, Loescher teaches wherein said proximal and distal end portions are comprised of a nonwoven material (page 10, lines 10-14).

18. Regarding claim 16, Loescher teaches wherein an adhesive and a fingerlift are provided on the distal end portion (pressure sensitive adhesive 20, page 7, line 27, finger lift element 32, page 9, line 7).

19. Regarding claim 19, Loescher teaches a stable roll of laminated closure tape (page 6, lines 18-19, Abstract).

20. Regarding claim 20, Loescher teaches wherein the stable roll of prelaminated closure tape is levelwound (page 6, lines 19-20, Abstract).

### ***Claim Rejections - 35 USC § 103***

21. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

22. Claims 15 and 17, are rejected under 35 U.S.C. 103(a) as being unpatentable over Tritsch (U.S. Patent No. 3,930,503) in view of Richman et al. (U.S. Patent No. 4,020,842).
23. Tritsch is relied upon as disclosed above.
24. Regarding claim 10, Tritsch teaches a closure tape tab for an absorbent article (See Abstract), for fastening of the article on the body of a person (col. 2, lines 10), comprising a proximal end portion (terminal end 16, backing sheet 21, and facing sheet 23, col. 2, lines 43, 59-60, Fig. 3) and a distal end portion (terminal end 15, col. 2, line 42) being connected by an inner tab portion (central segment 17, col. 2, lines 43-45), said inner tab portion having a first major surface (lower surface, Fig. 3) and an opposite second major surface (upper surface, Fig. 3), wherein said proximal end portion is connected to said inner tab portion at said second major surface thereof such that said proximal end portion extends over at least a substantial portion of said inner tab portion (pressure sensitive adhesive layer 15, Fig. 3), and said distal end portion is connected to said inner tab portion at said first major surface thereof such that at least a portion thereof remains exposed (Fig. 3) given that the distal end portion and inner tab portion are connected, and wherein an anti-adhesive means is provided at least at a part of said exposed portion of the first major surface of the inner tab portion (release surface 25, col. 2, line 63).
25. Regarding claim 15, Tritsch teaches wherein said proximal end portion is comprised of a nonwoven material (col. 3, lines 65-66).
26. Tritsch fails to teach the distal end portion being comprised of a nonwoven material.
27. However, Richman et al. teaches a closure tape tab (reclosable tab stock, See Abstract) wherein said proximal and distal end portions are comprised of a nonwoven material (left and right sides of Fig. 3, diaper portions 27 and 28, col. 3, lines 56 and 67).



28. It would have been obvious to one of ordinary skill in the art at the time of the invention to use a nonwoven material for both the proximal and distal end portions of Tritsch for softness.

29. Regarding claim 17, Tritsch teaches a closure tape tab for an absorbent article (See Abstract), for fastening of the article on the body of a person (col. 2, lines 10), comprising a proximal end portion (terminal end 15, pressure sensitive adhesive layer 15, col. 2, line 66, Fig. 3, col. 2, line 42) and a distal end portion (terminal end 16, col. 2, line 43, Fig. 3) being connected by an inner tab portion (central segment 17, col. 2, lines 43-45), said inner tab portion having a first major surface (lower surface, Fig. 3) and an opposite second major surface (upper surface, Fig. 3), wherein said proximal end portion is connected to said inner tab portion at said second major surface thereof such that said distal end portion extends over said entire first major surface of said inner tab portion (terminal portion 16 extends over the entire first major surface central segment 17, Fig. 3).

30. Tritsch fails to teach a line of weakness.

31. However, Richman et al. teaches wherein a line of weakness is provided between the distal end and the proximal end of the closure tape tab (slit 18, col. 3, line 8, Figs. 1 and 3).

32. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide a line of weakness between the distal end and the proximal end portions of the closure tape tab of Tritsch to control the limitation of peel-back (Richman et al., col. 4, lines 10-19).

33. The resulting structure of Tritsch as modified by Richman et al. produces a closure tape tab wherein that a portion of the distal end portion is removable from the closure tape tab so as to expose the first major surface of said inner tab portion (Tritsch, release surface 25, Fig. 3).

34. Claims 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tritsch (U.S. Patent No. 3,930,503) and/or in view of Richman et al. (U.S. Patent No. 4,020,842) in view of Loescher (WO 2004/075803).

35. Tritsch and Tritsch as modified by Richman et al. is relied upon as disclosed above.

36. Regarding claim 19, Tritsch and Tritsch as modified by Richman et al. fails to teach a stable roll of laminated closure tape.

37. However, Loescher teaches a stable roll of laminated closure tape (page 6, lines 18-19, Abstract).

38. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide closure tape tab of Tritsch in the form of a stable roll for continuous unwinding of the roll at high speeds.

39. The recitation "laminated" is a process limitation. It is noted that "[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process", *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985). Further, "although produced by a different process, the burden shifts to applicant to come forward with evidence establishing an unobvious difference between the claimed product and the prior art product", *In re Marosi*, 710 F.2d 798, 802, 218 USPQ 289, 292 (Fed. Cir.1983). See MPEP 2113. Furthermore, the limitation is taught by Loescher (See Abstract).

40. The recitation "...can be cut" is a statement of intended use and does not impart structural limitations upon the claimed invention. The recitation does not limit the scope of the claim since the resulting structure of the claimed invention encompasses that of the device taught by Lipper, as shown above. MPEP 2111.02.

41. Regarding claim 20, Tritsch and Tritsch as modified by Richman et al. fails to teach wherein stable roll of prelaminated closure tape is levelwound.

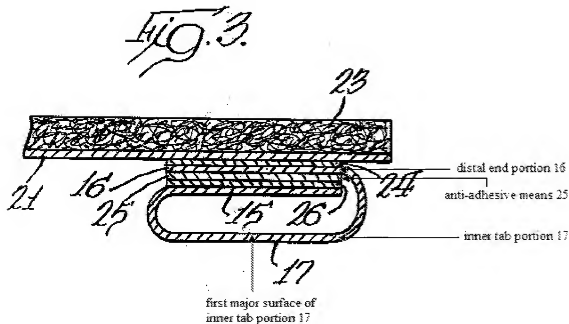
42. However, Loescher teaches wherein the stable roll of prelaminated closure tape is levelwound (page 6, lines 19-20, Abstract).

43. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide a stable roll that is levelwound to increase storage capacity.

44. The recitation "prelaminated" is a process limitation. It is noted that "[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process", *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985). Further, "although produced by a different process, the burden shifts to applicant to come forward with evidence establishing an unobvious difference between the claimed product and the prior art product", *In re Marosi*, 710 F.2d 798, 802, 218 USPQ 289, 292 (Fed. Cir.1983). See MPEP 2113.

***Response to Arguments***

45. Applicants arguments filed 15 February 2010 have been fully considered but they are not persuasive.
46. Applicants' amendments overcame 35 U.S.C 112, second paragraph, rejection of record.
47. Applicants amended independent claim 17 to include limitations of independent claim 10, cancelled claim 18, and "...such the said distal end portion extends over said entire first major surface of said inner tab portion."
48. Applicants argue that regarding Fig. 2 "Tritsch shows that the anti-adhesive means and the distal end portion are on opposite faces of the inner tab portion, and they are not both on the first major surface as claimed in claim 10."
49. However, as shown in Fig. 3 below, the anti-adhesive means and distal end portion of Tritsch are both on the first major surface of the inner tab portion.



50. Applicants argue that “Regarding claim 11, as amended, Tritsch clearly does not teach wherein the anti-adhesive means extends over the entire length of said exposed portion of the first major surface of the inner tab portion.”

51. However, the anti-adhesive means of Tritsch does extend over the entire length of said exposed portion of the first major surface as shown in Fig. 2 given that release surface 25 of Tritsch, which is considered the anti-adhesive means, extends over the entire length of the top surface of central segment 17 of Tristch, which is considered the exposed portion of the first major surface of the inner tab portion. Further, there is nothing in the claims that required the anti-adhesive means and first major surface of the inner tab portion to be in direct contact.

52. Applicants argue that “Regarding claim 17, as amended, Tritsch clearly does not teach wherein the distal end portion extends over the entire length of said first major surface of the inner tab portion.”

53. However, the distal end portion of Tritsch does extend over the entire length of said first major surface as shown in Fig. 2 given that terminal end 16 of Tritsch, which is considered the distal end portion, extends over the entire length of the top surface of central segment 17 of Tristch, which is considered the first major surface of the inner tab portion. Further, there is nothing in the claims that required the distal end portion and first major surface of the inner tab portion to be in direct contact.

54. Applicants argue that claim 15, 18, 19, and 20 rejected under 35 U.S.C 102 (b) are not anticipated by the cited art and therefore requests withdrawal of the improper rejections.

55. It is agreed that the 35 U.S.C 102 (b) rejections were meant to be 35 U.S.C. 103(a) rejections, as disclosed above.

56. Applicants argue that regarding Fig. 2, "Loescher shows the proximal end portion is connected to the upper surface of the inner tab portion, not the lower surface", and "clearly ...nothing is present on the lower surface."

57. However, the proximal end portion of Loescher is connected to inner tab portion at the second major surface as shown in Fig. 2 given that the right portion of closure element 8 of Loescher, which is considered the proximal end portion, is connected to the lower surface of elastic laminate fastening tab 2, which is considered the inner tab portion, via adhesive 22. Further, there is nothing in the claims that required the proximal end portion and second major surface of the inner tab portion to be in direct contact.

### *Conclusion*

58. Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHENG YUAN HUANG whose telephone number is (571) 270-7387. The examiner can normally be reached on Monday-Thursday from 8 AM to 4 PM.

59. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Callie Shosho, can be reached at 571-272-1123. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

60. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

Art Unit: 1787

system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/C. H./

Cheng Yuan Huang

Examiner, Art Unit 1794

March 31, 2010

/Callie E. Shosho/

Supervisory Patent Examiner, Art Unit 1787